



DEPARTMENT OF DEFENSE

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Office of the Secretary

32 CFR Part 199

Docket ID: DOD-2011-HA-0059

RIN 0720-AB52

TRICARE; Elimination of the Non-Availability Statement (NAS) Requirement for Non-Emergency Inpatient Mental Health Care

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule eliminates the requirement that states a NAS is needed for non-emergency inpatient mental health care in order for a TRICARE Standard beneficiary's claim to be paid. Currently, NAS are required for non-emergency inpatient mental health care for TRICARE Standard beneficiaries who live within a military treatment facility catchment area. At this time, the number of NASs issued is negligible as most mental health admissions are emergency admissions. Requiring a NAS for a relatively few non-emergency inpatient mental health admissions is disproportionate to the cost of maintaining the systems necessary to process and coordinate the NAS.

DATES: Effective [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Richard Hart, TRICARE Policy and Operations, TRICARE Management Activity, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041, 703-681-0047.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of this Regulatory Action

a. Currently, NAS are required for non-emergency inpatient mental health care for TRICARE Standard beneficiaries who live within a military treatment facility catchment area. Pursuant to section 1080(c)(2) of title 10, United States Code, the Secretary can waive the requirement to obtain NASs following an evaluation of the effectiveness of such statements in optimizing the use of facilities of the uniformed services. At this time, the number of NASs issued is negligible as most mental health admissions are emergency admissions. Requiring a NAS for a relatively few non-emergency inpatient mental health admissions is disproportionate to the cost of maintaining the systems necessary to process and coordinate the NAS. This final rule eliminates the requirement for a NAS for non-emergency inpatient mental health care in order for the TRICARE Standard beneficiary's claim to be paid.

b. Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

II. Summary of the Major Provisions of this Regulatory Action

This final rule eliminates the requirement for a NAS for non-emergency inpatient mental health care in order for the TRICARE Standard beneficiary's claim to be paid.

The elimination of the requirement for a NAS for non-emergency inpatient mental health care for TRICARE Standard beneficiaries is separate and distinct from the ongoing right of first refusal for specialty services requested by a civilian provider under TRICARE Prime, if the services are available at the MTF, or the ongoing statutory requirement for preadmission authorization before inpatient mental health services may be provided. This final rule does not eliminate the right of first refusal or requirement for preadmission authorization.

In reviewing the proposed rule, we discovered that we had inadvertently deleted not only the requirement to obtain a NAS for non-emergency inpatient mental health services for TRICARE Standard beneficiaries living within the 40-mile catchment area of a military treatment facility, but also the Department's general implementation of section 721 of Public Law 106-398, as amended by section 735 of Public Law 107-107, regarding the Secretary's statutory authority to require a NAS. We have remedied that oversight in this final rule, thereby preserving the option to impose the requirement to obtain NASs in the future, consistent with existing statutory authority, should circumstances change and a demonstration be made that, by performing specific procedures at affected military medical treatment facilities, use of such facilities would be optimized and significant costs avoided. Section 199.4(a)(9) is thereby amended to retain this general authority while still eliminating the current requirement to obtain a NAS for non-emergency inpatient mental health services.

III. Costs and Benefits of this Regulatory Action

There are no anticipated budgetary health care cost increases. Requiring a NAS for a relatively few non-emergency inpatient mental health admissions is disproportionate to the cost of maintaining the systems necessary to process and coordinate the NAS.

Public Comments

The proposed rule was published in the Federal Register on September 16, 2011 (76 FR 57690). No public comments were received.

Regulatory Procedures.

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Order 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts. This final rule is not economically significant nor a significant regulatory action as defined under these executives orders.

Sec. 202, Public Law 104-4, “Unfunded Mandates Reform Act”

This rule does not contain unfunded mandates. It does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal Agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities. This final rule will not have a significant impact on a substantial number of small entities for purposes of the RFA. Thus this final rule is not subject to this requirement.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511)

This final rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, “Federalism”

We have examined the impacts of the rule under Executive Order 13132 and it does not have policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the

distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55

2. Section 199.4 is amended by revising paragraph (a)(9) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(a) * * *

(9) Nonavailability Statements within a 40-mile catchment area. Unless required by action of the Assistant Secretary of Defense for Health Affairs (ASD(HA)) under this paragraph (a)(9), nonavailability statements are not required. If they are required by ASD(HA) action, in some geographic locations, CHAMPUS beneficiaries not enrolled in TRICARE Prime may be required to obtain a nonavailability statement from a military medical treatment facility in order to receive specifically identified health care services from a civilian provider. If the required care cannot be provided through the Uniformed Service facility, the hospital commander, or a designee, will issue a Nonavailability Statement (NAS) (DD Form 1251). Failure to secure such a statement may waive the beneficiary's rights to benefits under CHAMPUS/TRICARE.

(i) With the exception of maternity services, the ASD(HA) may require an NAS prior to TRICARE cost-sharing for additional services from civilian sources if such services are to be provided to a beneficiary who lives within a 40-mile catchment area of an MTF where such services are available and the ASD(HA):

(A) Demonstrates that significant costs would be avoided by performing specific procedures at the affected MTF or MTFs; or

(B) Determines that a specific procedure must be provided at the affected MTF or MTFs to ensure the proficiency levels of the practitioners at the MTF or MTFs; or

(C) Determines that the lack of NAS data would significantly interfere with TRICARE contract administration; and

(D) Provides notification of the ASD(HA)'s intent to require an NAS under this authority to covered beneficiaries who receive care at the MTF or MTFs that will be affected by the decision to require an NAS under this authority; and

(E) Provides at least 60-day notification to the Committees on Armed Services of the House of Representatives and the Senate of the ASD(HA)'s intent to require an NAS under this authority, the reason for the NAS requirement, and the date that an NAS will be required.

(ii) Rules in effect at the time civilian medical care is provided apply. The applicable rules and regulations regarding Nonavailability Statements in effect at the time the civilian care is rendered apply in determining whether a NAS is required.

(iii) The Director, TMA is responsible for issuing the procedural rules and regulations regarding Nonavailability Statements. Such rules and regulations should address:

(A) When and for what services a NAS is required. However, a NAS may not be required for services otherwise available at an MTF located within a 40-mile radius of the

beneficiary's residence when another insurance plan or program provides the beneficiary's primary coverage for the services. This requirement for an NAS does not apply to beneficiaries enrolled in TRICARE Prime, even when those beneficiaries use the point-of-service option under § 199.17(n)(3) of this part; and

(B) When and how notifications will be made to a beneficiary who is not enrolled in TRICARE Prime as to whether or not he or she resides in a geographic area that requires obtaining a NAS; and

(C) What information relating to claims submissions, including the documentation, if any, that is required to document that a valid NAS was issued. However, when documentation of a NAS is required, then that documentation shall be valid for the adjudication of CHAMPUS claims for all related care otherwise authorized by this part which is received from a civilian source while the beneficiary resided within the Uniformed Service facility catchment area which issued the NAS.

(iv) In the case of any service subject to a NAS requirement under this paragraph (a)(9) and also subject to a preadmission (or other pre-service) authorization requirement under § 199.4 or § 199.15 of this part, the administrative processes for the NAS and pre-service authorization may be combined.

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DATED: February 1, 2013.

Patricia L. Toppings
OSD Federal Register Liaison Officer
Department of Defense

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